

REMARKS

The requirement for restriction interposed in the present application independent and distinct the claims into two purportedly separate inventions: Class I (claims 1-11) and Class II (claims 12-55).

Provisional Election With Traverse

Applicant provisionally elects to prosecute the Group I claims, claims 1-11, with traverse, and without prejudice to prosecuting the Group II claims, claims 12-55, in the present application or in a later application.

The Restriction Requirement Is Improper

Applicant respectfully submits that the stated reason for the restriction requirement, that “Claims 1-11, draw to a magazine-based cartridge library having a magazine transport device with a tray, classified in class 360, subclass 92 and Claims 12-47, draw to a magazine-based cartridge library having a magazine holder and door mechanism, classified in class 360, subclass 90” is incorrect and misapprehends the claimed invention.

For example, apparatus claim 1 is not limited to a “magazine transport device with a tray” but rather recites “an entry/exit port for conveying a data cartridge magazine between an environment that is exterior to said cabinet and a space that is interior to said cabinet”. Claims 4-7 depending from claim 1 expressly recite a tray for performing the generic function of conveying a data cartridge magazine between the cabinet interior and exterior. Independent claim 12 from Group II recites both a “magazine transport device” and a “magazine holder” in addition to a “door mechanism for exposing and unexposing said magazine holder”. Dependent claim 14 discloses a tray as an element for use as a magazine holder as recited, “said magazine holder comprises a magazine tray for supporting an

overlying data cartridge magazine”. Indeed, Applicant's written description, for example, expressly describes a tray and a magazine holder as performing the generic function according to an embodiment of the invention as recited in paragraph 117 (p. 15, lines. 1-7) “With reference to FIGS. 18A-18E, the first entry/exit port 368 is generally comprised of: (a) a tray 386 for supporting a magazine;” additionally paragraph 137 (p. 18, lines. 65-67) recites, “While the entry/exit port 368 employs a movable tray 386, an entry/exit port that employs a cartridge holder that does not move is also feasible.” The door mechanism does not constitute a feature preventing the claims identified as Group I unusable with Group II in a single combination.

The subcombinations, Group I and II, are not independent and distinct inventions because the magazine transport device is expressly recited in both Groups I and II, the magazine holder and the tray perform the generic function of conveying a data cartridge magazine between the cabinet interior and exterior, and Group I is not limited to the inclusion of the door mechanism of Group II.

Thus, Applicant respectfully submits that the basis for the restriction requirement is erroneous, and that no showing has been made that the subcombinations are separately useable and therefore distinct from each other. MPEP 806.05(d)


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Authorization To Charge Necessary Fees

While no fee is believed due with this submission, the Commissioner is hereby authorized to charge any necessary fees associated with this submission, or credit any overpayment, to Deposit Account No. 50-0289.

Respectfully submitted,

Dated: 5/26/05


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